

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission
On Its Own Motion

Amendment of 83 Ill. Adm. Code 300

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10-0281

ORDER

By the Commission:

The Illinois Commerce Commission ("Commission") has adopted 83 Ill. Adm. Code 300, "Guidelines for Right-of-Way Acquisitions" to prescribe the procedures to be used by regulated entities to acquire property rights and includes a description of proceedings at the Commission related to such property rights acquisition. Section 300.30 lists information that regulated entities must provide to landowners at least 14 days prior to calling or making direct contact with them in order to acquire property rights.

In its final Order in Docket 09-0054, the Commission directed Staff to submit proposed revisions to Appendix A to 83 Illinois Adm. Code 300 ("Appendix A") to address the Commission's concerns about perceived inaccuracies and shortcomings associated with existing Appendix A language. The Commission directed Staff to submit its proposed revisions to Appendix A within six months of its Order, dated October 15, 2009.

In a Staff Report dated March 26, 2010, the Staff of the Energy Division has presented a synopsis of draft amendments for consideration by the Commission. Staff supports the draft amendments by noting that the draft:

1. References Section 15-401 of the Act and common carriers by pipeline;
2. References Section 8-509 of the Act when discussing eminent domain;
3. Explains that an order under Section 8-503 does not, by itself, constitute a grant of eminent domain authority. The recommended revision explains that the Commission may grant eminent domain authority under Section 8-509 of the Act either simultaneously with an order under Section 8-503 of the Act, or in a separate proceeding, depending on the nature of the company's request; and
4. Explains that a public utility or common carrier by pipeline may elect to request relief under Section 8-503 simultaneously with its petition for a certificate, or request relief under Section 8-503 at a later time.

The Staff Report recounts the efforts that took place to prepare draft amendments. Staff posted a draft of its revised Appendix A on the Commission's website, and requested informal comments from the public about the posted revisions by February 12, 2010. In addition to making its draft proposed amendments available to the general public for comment, Staff directly notified the following entities and informed them about the posting: regulated electric, gas and water utilities; telecommunication carriers; common carriers by pipeline; the Citizens Utility Board; the Illinois Attorney General's Office; the Illinois Farm Bureau; American Transmission Company; LS Power; the Illinois Department of Agriculture; and the Illinois Municipal League. Staff received informal comments from several parties and carefully considered the comments when finalizing the proposed revisions to Appendix A.

The Commission is satisfied that there is sufficient support in the Staff Report to warrant the initiation of a rulemaking proceeding and to submit the first notice of proposed rulemaking to the Secretary of State.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the subject matter herein;
- (2) the Staff Report, dated March 26, 2010, should be filed in this docket and made a part of the record of this proceeding;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) this proceeding is a rulemaking and should be conducted as such;
- (5) the proposed amendments to 83 Ill. Adm. Code 300, as reflected in the attached Appendix, should be submitted to the Secretary of State to begin the first notice period.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the proposed amendments to 83 Ill. Adm. Code 300, as reflected in the attached Appendix, be submitted to the Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that the Staff Report dated March 26, 2010 shall be made a part of the record of this proceeding.

IT IS FURTHER ORDERED that a copy of this Order be sent to all public utilities and all common carriers by pipeline under the jurisdiction of the Commission.

IT IS FURTHER ORDERED that this proceeding is a rulemaking and shall be conducted as such and not as a contested case.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 7th day of April, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman